O. Drugs
control 1/44

1944. **File No.**

Legal Department-

A **BRANCH**

Subject:— Opinions under the Drugs Control Order —

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Legal Department File No. O. Drugs Control/44.

S.No.	R.I. / O.M6.	Subject.	Pages.
1.	6345 11.9.44	The Drugs Control Order, 1943- Clause (4) - Whether licence would be necessary for carrying on business of importer.	1.
2.	8830 14.12.44.	Whether amendment of the order is necessary for considering a scheme for controlling the distribution of certain drugs.	3 - 4.

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Office of the R.L.A.

Since Dr. Popatlal does not carry on the business of manufacturer, importer, wholesaler or retailer, no license would be necessary for him under clause 4 of the Drugs Control Order, 1943 for sale of the excess quantity of Potassium Bromide possessed by him for his personal use (see clause 5(3) of the Order). It is not known whether the stock of Potassium Bromide possessed by him was in excess of his normal requirements within the meaning of clause 12 of the Order. If not, it does not appear that he has contravened any of the provisions of the Drugs Control Order. If Dr. Popatlal is not liable under the Drugs Control Order either for sale or for attempt to sell, much less would his agent Kofatlal who tried to negotiate a sale on his behalf.

2. The Essential Drugs (Census) Order has no application to the present case since Dr. Popatlal is not a person engaged in the business of manufacturing or importing drugs or of selling drugs whether wholesale or retail within the meaning of clause 3 of the Order.

Sd/- P.N.M.
7/9/44.

Remembrancer of Legal Affairs.

U.R. to P.D. (Supply) No. 6345, dated the 11th September 1944.

4-Cs.

M.V.V./10.7

Office of the R.L.A.

The Government of Bombay is considering a scheme for controlling the distribution of certain drugs such as Glaxo and Oster Milk in Schedule A to the Drug Control Order, 1943, and proposes to restrict the sale by an importer of such drugs to a limited number of dealers. The question raised for the consideration of the R.L.A. is whether the object can be achieved (1) by reducing the number of retailers concerned (2) by requiring the importer to supply products to particular dealers only or (3) by requiring that particular approved dealers should deal in such producats under the Drug Control, orders 1943, or whether an amendment of the Drug Control Order would be necessary for the purpose.

2. The Drug Control Order, 1943, is made by the Central Government under sub-rule (2) of rule 81 of the Defence of India Rules. "Drug" as defined in clause (2) of that Order means any of the pharmaceutical chemicals, patent medicines and other articles specified in Schedule A. Clause 5(1) provides that no person shall purchase from a manufacturer importer or wholesaler ~~may~~ any drug except under and in accordance with the conditions of a valid license in Form B issued under clause 6 of this Order or of a valid license for the purchase of drugs issued by an appropriate authority of an Indian State under a law substantially corresponding to this Order. Sub-clause (2) lays down that no manufacturer or wholesaler shall sell or offer to sell any drug except to persons holding valid licenses in Form B. Under clause 6 all -persons who have been carrying on business as wholesalers or retailers continuously the years 1941, 1942 and 1943 shall on application be given licenses unless the Provincial Government decides otherwise for special reasons. Clause 11 provides that no manufacturer, importer, wholesaler or retailer shall refuse to sell any drug without reasonable cause. Under Clause 7 of the licensing authority may specify in the license the

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conditions if any subject to which it is issued and the licensee shall comply with those conditions. Reading these provisions together it would appear that the Drug Control Order as it stands does not empower Government for the purpose of rationing a drug in short supply to restrict the number of dealers in that drug nor does it empower Government either to direct an importer to sell drug to specified licensees or to prohibit some licensees from dealing in it. The conditions imposable under clause 7 are such as would advance the object of thee order. The restrictions proposed are out-side the scope of the Order. Consequently it would not be possible to impose conditions under clause 7 of the Order requiring the importer to sell to specified dealers.

3. The object can however be achieved if the Drug Control Order is suitably amended by the Central Government for the purpose.

4. It may be noted that in the present case H.J. Foster & Co. are willing to restrict their sales in Bombay to 20 retailers and the Government of India has advised that their refusal to sell to other retailers would in the circumstances stated be a refusal with reasonable cause. It is not clear how a scheme of restriction cannot be worked on this voluntry basis.

5. Probably an independant order under Rule 81 of the Defence of India Rules could legally restrict the number of retailers of infant foods. However that point has not been fully considered since such an order would affect to some extent the working of the Drug Control Order 1943 and would properly be made by, or after consultation with, the Central Government.

d/- P.N.M.
14/12/44

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No. 8830, dated the 14th December 1944.

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